

The Acting Director

16 September 1948

Assistant General Counsel

Proposed Omnibus Bill Revising
United States Espionage Laws.

1. Attention is called to the attached copy of a proposed omnibus bill relating to the internal security of the United States, and containing revisions of the espionage laws and related statutes. These proposals are the subject of the Director's comments to Mr. Eberstadt in his letter of 14 September 1948.

2. This bill is an outgrowth of meetings in the Spring of 1946 of an interdepartmental committee representing G-2, ONI and the FBI. Their recommendations were transmitted to the Attorney General by Robert B. Patterson, then Secretary of War, under date of 27 June 1946. Since that time the proposals have been subject to comments by the State and Treasury Departments, the FCC, and perhaps others.

3. CIA has never been requested formally for comments on the measure although a copy of the earlier proposals were obtained by us informally from the Department of Justice a long time ago. Because the Army and the Navy had backed the original proposals, the Secretary of Defense was not consulted until quite recently. However, it is believed that the latter now finds the bill objectionable for substantially the same reasons as CIA, as set forth below.

4. The Bureau of the Budget has been attempting to clear this omnibus bill for a considerable period of time. I am informed that the President himself is personally interested in it. However, material differences, which have not yet been compromised, have arisen between the Department of Justice and the Department of the Treasury over several of its provisions. The President has indicated that these differences must be settled before the bill can reach the Congress. It may, therefore, be necessary to hold further interdepartmental hearings. Because of the objections to the bill set forth below, it is felt that CIA should take some steps to indicate its interest and its objections.

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5. As we stated to Mr. Eberstadt, the first section of the proposed bill apparently is an attempt to tighten up sections 1 and 4 of the existing Espionage Act (50 U.S.C. 31, 34). These changes are desirable and merely close technical loopholes in the Espionage Act.

6. Section 4 of the proposed bill would appear to be particularly objectionable to CIA. This section adds a new category to those persons required to register as agents of a foreign power which would add the following clause to the provisions establishing the present categories:

"(5) any person who has knowledge of or has received instruction in the espionage, counter-espionage, or sabotage service or tactics of a government of a foreign country or a foreign political party;"

This would, under a literal interpretation, force all those with counterintelligence experience during the war or otherwise, and many of those in other intelligence fields, to register as agents of foreign powers. We do not feel it is advisable to enforce the registration of American citizens as such agents under threat of fine or imprisonment merely because they have specialized knowledge or experience. As this proposed provision looks to the strengthening of internal security measures, it is not properly a field for comment by CIA, which by law is prevented from exercising any internal security functions. But as this provision could be construed to require the registration of many CIA employees, past and present, as well as many reserve officers of all Services, we feel that CIA is bound to raise objection to its passage.

The State Department raised similar objections to this section. However, the Department of Justice felt that it would be extremely helpful to them if such a roster of trained personnel were available so that they could call on specific persons with such training if the need arose. The Department of Justice position is exactly as set forth in the bill, namely, that all such people should be required to register. The Department of the Treasury commented that they were dissatisfied with this provision for the same reason as the State Department, particularly as it would require the registration of many members of the Secret Service. The Treasury, therefore, proposed to exclude all persons who received training or information in this connection while in the Government service. It

should be pointed out, however, that this exception should be carefully worded so as not to leave a loophole of escape to those who receive the information in the Government service and then put it to illegal use after leaving the Government.

7. From our standpoint, Section 5 presents a very real problem. It would appear that this section attempts to accomplish two distinct purposes. The first is to permit the FBI to indulge in wire tapping for the purpose of detection of crime connected with the internal security of the United States. The second purpose would be utilized in connection with the communications intelligence operations of the United States.

8. In connection with Section 5, it should be recollected that in the closing days of the last Congress legislation of the most delicate nature, carefully phrased from the security standpoint, was proposed jointly with the Secretary of Defense in connection with the Comint operation. The present proposal is particularly objectionable from the standpoint of Comint security. It is included in the bill in its most controversial section, which will receive the full brunt of any attacks, the bases of which are civil liberties and Supreme Court decisions on wire tapping. It is felt to be definitely contrary to our interests to have the two included in one section. It might be best to request elimination of any references to the cable and radio traffic from the bill, leaving the FBI to fight their fight for domestic wire tapping on its merits. Then the appropriate agencies could secure their needs in a separate bill, as originally contemplated.

It should be noted that the omnibus proposals include the right to use the information obtained under Section 5 as evidence in criminal or civil proceedings in which the Government is a party. This could involve most serious security implications.

9. It should be noted further, in connection with Section 5, that the right to secure this intercepted material is given to the FBI, the Director of Military Intelligence, the Chief of Naval Intelligence and the Director of Intelligence of the Air Force, with no mention of CIA. The purposes for which it is obtained are purposes intimately tied in with the police power and internal security functions, from which we are specifically

barred by law. Therefore, it might even be considered a violation of law for us to receive under this law the cable traffic contemplated in our earlier proposals this Spring in connection with the Communist legislation.

10. The Chief of the Advisory Council also feels Section 5 to be objectionable, both on substantive grounds and for reasons of security.

Walter L. Pforzheimer

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